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PUBLIC PROSECUTOR

v.

TAN YIN HOO

HIGH COURT MALAYA, KUALA LUMPUR

KC VOHRAH J

b

[FT CRIMINAL TRIAL NO. 10 OF 1984]

CRIMINAL LAW: *Dangerous Drugs - Drugs found in compartment of car - Accused was not in car at time of arrest - Another person was in the car at the material time - Alleged that drugs were not his but that of the other person - Cautioned statement admitting ownership of drugs admitted after voir dire.*

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The accused was charged with an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952. The Prosecution's case was that he was seen alighting from a car at about 11.00 am on 3 January 1984 and that he was arrested when he was paying dues on parking tickets at a Bandar Raya paying booth. He was brought back to the car wherein there was a woman passenger and that the police had kept watch over the car and the woman during the time when the accused was not in the car. The car was then driven back to the Police Station and on searching it the Police found 19 packets of 21.04 grammes of heroin in a compartment between the driver's and the front passenger seat.

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The accused made a cautioned statement where he admitted that the heroin belonged to him. The accused alleged that the cautioned statement was not voluntarily obtained and alleged that he had been assaulted and forced to give the statement admitting the possession of the heroin and that further the woman had persuaded him to admit to the drugs.

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After a trial within a trial the Court ruled that the statement was admissible and that the statement was properly preceeded by a caution under s. 37A(1) of the Dangerous Drugs Act and that the statement was voluntarily made.

Held:

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That as he had admitted in his cautioned statement that he knew the drug was heroin and nothing in his evidence created a reasonable doubt otherwise, the presumptions of possession of the heroin and that the accused was trafficking in it would apply and as they were not rebutted on the totality of the evidence considered on a balance of probabilities, the accused was found guilty of the charge.

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[Guilty and convicted on the amended charge.]

Legislation referred to:

Dangerous Drugs Act 1952, ss. 31A(1)(b), 37(da)(i), 37A(1)(b), 39B(1)(a), (2)

JUDGMENT

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KC Vohrah J:

The accused was charged on a finally amended charge as follows:

That you on 3 January 1984 at about 11.00 a.m. at Jalan Sri Amar, Off Jalan Raja Laut, in the city of Kuala Lumpur, in the Federal Territory, did on your own behalf traffic in dangerous drugs to wit heroin weighing a total of 21.04 grammes and you have thereby committed an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised 1980) and punishable under s. 39B(2) of the same Act.

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The prosecution's case against the accused was that he was seen alighting from a car at the time and date mentioned in the charge; that he was arrested as he was paying dues on parking tickets at a Bandar Raya paying stall; that he was brought back to the car wherein there was a woman passenger; that the police had kept watch over the car and the woman during the brief interlude when the accused was not in the car; that the car was driven to the Jalan Bandar Police Station with him and the woman and upon a search being conducted in the car a bundle of 19 packets of 21.04 grammes of heroin was found in a compartment between the driver's and the front passenger's seat; that in a cautioned statement which I held to have been voluntarily made by the accused, the accused admitted putting 18 packages of heroin in the car.

Prosecution witness Johari bin Chin (PW1) stated that acting on information he together with PW2 and 3 others, at about 10.40 p.m. on 3 January 1984, waited in front of the ABN Bank, Jalan Raja Laut for a car bearing registration number Wad 7150. After about 15 minutes of waiting he saw the car pass by and the police team followed behind on their 3 motor cycles. He saw the car stop by Bandar Raya paying kisok on its left side. He saw the accused alight from the car and head towards the kisok. He approached him and saw him with some tickets in his hand and he saw him paying dues on them. He introduced himself as a police officer and arrested him. He searched his person but no drugs were found on him. Then he put the accused into the car. He said that DPC Mohamad Nor (PW2) kept observation by the left front door of the car on the woman who was seated on the front passenger seat. He said DPC Mohd. Asri took away the ignition key of the car while DPC Asri stood guard at the rear of the car.

PW1 went to say that DPC Mohamad then drove the car with the woman passenger sitting in front and the accused sitting behind, sandwiched behind himself and PW2, to the Jalan Bandar Police Station where Inspector Ahmad Nordin (PW3) made a search of the car in the presence of the accused and the woman and Inspector Ahmad Nordin found a plastic package in the compartment of a box which was placed between the driver's and the front passenger's seats.

PW1 said that he and the police party led by Inspector Nordin together with the accused and the girl subsequently left for Selayang to search a house and to Kepong but he could not remember whether it was to go to the accused's house in Kepong. On their return from the search he went to the enquiry office of the Anti Narcotics office at Jalan Bandar to place the accused and the girl there. PW2 gave substantially the same evidence as PW1 as to the police party waiting for the car, their spotting it and following it and the arrest of the accused. He said he was riding a motor cycle, with PW1 riding pillion, and he went to the left front door of the car. PW1 went straightaway to arrest the accused while he kept observation on the Chinese girl who was in the passenger's seat. He said she had a handbag but he did not see her do anything with it.

Inspector Ahmad Nordin, PW3, said that he searched the car WAD 5170 in the compound of Jalan Bandar Anti Narcotics Division in the presence of the accused and the Chinese female and that he found a plastic package in a compartment which was between the front passenger's and the driver's seat. In opening it he found 19 plastic packets suspected to contain heroin. He said that subsequently he proceeded to Selayang and then to Kepong where he searched two houses but did not find anything there. He said that after that he came back with two arrestees and the police party to the police station in the late afternoon and the two were brought to the enquiry office.

a He also said he recovered RM2400 (P13) from a wallet which was inside the girl's handbag. The Investigating officer of the case, Inspector Hassan Jamaluddin (PW6), stated that he received the bag (P6) holding 19 small plastic packets (P8A to S) of a substance suspected to be heroin from PW3 and sent all these to the chemist for analysis. The chemist report (P18) on the analysis indicated that the substance in the 19 packets contained 21.04 grammes of heroin.

b The facts so far recounted show that while the substance in the 19 packets contained 21.04 grammes of heroin, there was no evidence to show the accused's relationship with the package of drugs found in the car. But there was a nexus from other evidence. The accused had made statement to Inspector Ten that very day on 3 January 1984 and in it he admitted putting 18 packets of heroin in the car. In a trial within a trial I determined that the statement

c was properly preceded by a caution under para. (b) to s. 31A(1) of the Dangerous Drugs Act and that it was voluntarily made. The ruling appears in Annex A to this judgment.

In the cautioned statement the accused was asked by Inspector Ten,

Was anything found in your car?

The accused replied,

d Yes the Police found 18 packets of heroin.

He was next asked,

How do you know what the police found were (sic) heroin?

He replied,

e I knew what the police found were (sic) heroin because I put the heroin there.

With this admission that he knew what the police found was heroin because he put it there, it is clear that a *prima facie* case had been made out by the prosecution that he had control and custody of the heroin and that he knew its nature. He was presumed to have been in possession of the heroin. The heroin found being 21.04 grammes he was presumed to have trafficked in it. The contrary had to be proved by him under s. 37(da)(i) of the Dangerous

f Drugs Act 1952.

But before I proceed to deal with the defence I would like to deal briefly with the cross-examination of the defence witnesses. The cross-examination was directed at showing that the woman Wong Mei Lin who was a passenger in the car could have put in the bundle of drugs into the compartment while the accused went to the paying kiosk; that she had a handbag on her lap big enough to hold the bundle of drugs; that she had RM2400 case on her. Wong Mei Lin was not called as a witness as she could not be traced in spite of police efforts. That Wong Mei Lin had a handbag with her, that it was large enough to hold the bundle and that RM2400 cash was found in a wallet in the bag were not denied by the prosecution witnesses. But PW2, who kept observation on the woman when the car stopped and the accused alighted from it, while he agreed his attention could have been momentarily

g diverted, was adamant he did not see the woman put anything from her bag into the compartment of the box beside her.

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Wong Mei Lin did not give evidence; she could not be traced after she was released from police custody. PW6, the investigating officer, gave evidence of his efforts to trace her at the addresses and telephone numbers she had given to the police to no avail. I was satisfied that the police had made genuine efforts to trace her and that there was no oblique motive

i on the part of the prosecution for her non-availability as a witness.

At the close of the case of the prosecution, as stated earlier, I was satisfied that a *prima facie* case of trafficking in heroin was made out against the accused and I called upon him to make his defence.

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The accused made an unsworn statement. It was an elaborate one denying knowledge or possession of the drugs. He shifted blame on to his companion who was in the car that he used that day. He said that she, Wong Mei Lin, had put the drugs in the car console. He also said that she persuaded him to make the cautioned statement admitting that the drugs were his.

b

He stated that he used the car after it had been borrowed by a friend of his from his mother. He seemed to imply that the drugs could already have been in the car when it was returned by his friend.

He also implied drugs could have been kept in the car after he had given the key to the car to the caretaker of a hotel where he stayed the night previous to the day of his arrest.

c

His story was that on the night previous to the date of his arrest the car had been returned to his mother by his friend he drove it to pick up his girl friend Wong Mei Lin. They went to a nightclub after which they spent the night in the hotel. He handed the key to the car to the caretaker of the hotel.

d

The next morning he took Mei Lin to her rented room at Kepong. After Mei Lin had her bath and changed her clothes she asked the accused to take her back to her place of work in Kuala Lumpur.

While he was driving along Jalan Raja Laut in order to go to pay dues on his parking tickets at the paying kiosk he noticed 3 motor cycles following the car and the girl told him to speed off. He told her however to wait as he had to pay for the parking tickets. He reached Jalan Seri Aman where he alighted to pay for the tickets and then he was arrested.

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It is clear that he meant the Court to infer that Mei Lin was the one who put the drugs in the console since, according to him, she was the one who had told him to speed off while he was not at all worried about 3 motor cycles tailing him.

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He said that after he had been arrested he and Wong Mei Lin were taken in the car to the police station. The car was searched and the officer who conducted the search found a package in the car and showed it to him.

After that the police brought him and the girl to Selayang where his house was searched. Then they went to Kepong where they searched the house where his wife and children were staying in.

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They were then brought back to High Street Police Station. He was taken to a room by a member of the team and questioned. When he returned from the room Mei Lin asked him the reason when he was taken to the room and he said that "they had asked me who my towkey was and they had assaulted me a few times." He asked her why she was crying and she told him that a police personnel had told her to "ask me to admit it and I would be released." He asked her, "Admit what?" She then told him "the packet was heroin." She said she knew it was heroin because she had put it there. He asked her "How much?" and she told him the package contained 18 packets. She then persuaded him to admit possession of the heroin if he loved her.

h**i**

- a* He stated that he was then brought to a room and Inspector Teh asked him if he would like to give statement and he replied, "Yes". According to him Inspector Teh said, before he gave his statement, that he would read the "undang-undang to him". He said that after Inspector Ten had read it he was asked if he understood it and he replied, "Yes". And he gave Inspector Ten a statement recounting what had happened. He said he told Ten he put the package of drugs in the car but he said he did not know when it was put there.
- b* He called his mother tong Kir Pee (PW2) to give evidence. She said that the car (which had been seized by the police) was hers. In her evidence in chief she said there were 3 keys to the car and friends could have access to the car. She did not state anything as regards the car having been borrowed, as alleged by the accused, the day (2 January 1984) before his arrest by a friend. Under cross-examination she said she could not remember if any one had used the car on 2 January 1984.
- c* In assessing the defence in the totality of all the evidence adduced it was clear the accused could not run away from the fact that the package of heroin was found in the compartment of a box inside the car he was driving on 3 January 1984. He had therefore to show that he had no knowledge that the package was there. So his first line of defence was that a friend had borrowed the car from his mother the previous night before he used the car. His mother,
- d* an unsatisfactory witness, could not remember if anyone had used the car the previous day. In any event it is highly unlikely that his friend would have inadvertently left the package containing 21.04 grams of illicit heroin in the box assuming the story was true. My view is that no such person had borrowed the car.
- The second line of defence was implicit that the caretaker of the hotel where he spent the night with Mei Lin could have put the drugs there as the accused had handed the keys to the car to him. I find that highly improbable. I find it difficult to believe that the caretaker would temporarily store illicit drugs in a car which is not his own. The accused's going to the hotel was casual and it would be ridiculous to infer that the caretaker had planted the heroin in the car.
- e*
- The third line of defence, inconsistent with the two previous lines, was that Mei Lin was the one who placed the drugs in the compartment. She was the one who told him to speed off when the 3 motor cycles, according to him, were spotted tailing him. She was the one who persuaded him to admit to the possession of the drugs at the police station. And she had RM2400 cash on her person when both of them were arrested.
- f*
- As was stated earlier when I discussed the evidence of the prosecution, when the accused was arrested outside the car Mei Lin was sitting in the passenger seat of the car and she had a handbag on her lap and the handbag was large enough to hold the package of drugs. But it will be remembered that PW2 who kept observation on her when the car stopped while he admitted his attention could have been momentarily diverted, was adamant that he did not see the woman put anything from her bag into the compartment of the box beside her. It would have taken more than a moment to open or unzip the handbag, take out the package, lift the cover of the box, hold it with one hand, and put the package into the compartment
- g*
- with the other hand and drop the cover on to the box movements which would have definitely observed. I have no reason to disbelieve PW2 when he said the woman did not put anything into the box.
- h*
- In the context of the cautioned statement which I had admitted, and there was nothing in his defence that could change my mind on its admissibility, the accused admitted to the heroin being put in the car by him. Admittedly he referred to 18 packets of heroin in the
- i*

cautioned statement instead of 19 packets which were actually discovered. But when there were so many packets in the package there could have been a mistake in the number of packets counted; in any event 18 is as close as one can get to 19.

But what about the RM2400 cash found on Mei Lin? it may well be that RM2400 cash is too big an amount to be found on a hairdresser. But Mei Lin may have been involved in the safekeeping of the money or involved as an accomplice for all one knows - but his admission was clear that he put the drugs in the car. There is nothing in his unsworn statement or defence and the evidence of the prosecution that creates a reasonable doubt in the prosecution's case that he was in control and custody of the heroin.

He had admitted in his cautioned statement that he knew the drug was heroin and nothing in the evidence adduced has created a reasonable doubt that he knew that the drug was heroin. There is no question of having to rebut a statutory presumption that he knew the drug was heroin on a balance of probabilities.

His defence is a tissue of lies which flies in the face of the prosecution's case - that the drug was found in the car that he drove and on his admission that he knew the drug was heroin and that he put the drug in the car. The presumptions of possession of the heroin and that he was trafficking in the heroin were not rebutted on the totality of the evidence considered on a balance of probabilities and I found him guilty and convicted him on the finally amended charge.

Ruling on Admissibility of Cautioned Statement.

Inspector Teh, PW1, gave evidence in the trial within the trial that on 3 January 1984 at 5.20 p.m. he recorded a cautioned statement in English from the accused. He said that he administered the caution under para. (b) of the proviso to s. 37A of the Dangerous Drugs Act 1952 and was satisfied the accused understood the caution after he had explained it to him and after the accused had read the Chinese text of the caution and told the Inspector he understood the caution. The accused also signed his name after (the text of) the caution in the document. Inspector Teh said that before he recorded the cautioned statement he was satisfied that there was no inducement, threat or promise from any one for the accused to make the statement.

The defence disputed that the statement was voluntarily made. The allegations were:

1. that the accused was interrogated in a room by two members of the team and one of them, Mohd. Jais, assaulted him; he was forced to take responsibility for the drugs found in a car which belonged to a woman Wong Mei Lin who had been arrested with him;
2. that the woman Wong Mei Lin had also been interrogated by another member of the arresting team in a room and had been persuaded to persuade him to take responsibility for the drugs found in the car;
3. that he did not understand the cautioned administered to him as he was a Hokkien and the caution was administered in Cantonese and that he could not read the Chinese text of the caution;
4. at he asked for a drink from Inspector Ten as he was thirsty and Inspector Ten refused to give him a drink.

However, in respect of the first allegation, it was not pursued when the accused gave evidence.

- a* I shall deal with allegations 3 and 4 first as these were put to Inspector Ten. The other allegations were specifically raised when the accused gave his evidence in the *voir dire*.

Inspector Ten said that Inspector Hassan (EW2) requested him to record a statement from the accused. When the accused was brought into his room, he spoke to him in Hokkien as the accused was a Hokkien. The accused in his evidence did not dispute that he was a Hokkien. Inspector Ten said he conversed with the accused in Hokkien to get the accused's

b his personal particulars to be inserted in the proforma used for recording the cautioned statement. Before he administered the caution he asked the accused the dialect in which the accused elected to speak and he said the accused elected to speak in Cantonese. That appears as a record in the cautioned statement. He said that the cautioned statement is best recorded in the dialect elected by the accused. Inspector Ten, who is Hakka, said he could speak Hokkien and Cantonese equally well although he cannot read Chinese characters as he is

c English educated. He said that he administered an explained the caution to the accused in Cantonese and he asked the accused to read the Chinese text of the caution. He said he did not test if the accused was proficient in Cantonese. And he said it was possible that the accused had asked to explain certain portions of the caution. According to Inspector Ten, however, the accused, when he was asked whether he understood the caution replied,

- d* Yes I fully understand the above caution after I had been explained and after I had read it in Chinese.

He said the accused then appended his signature after this statement was reduced into writing.

He then proceeded to record the statement from the accused who spoke in Cantonese. He had no difficulty in understanding the accused and he believed the accused understood him as he could reply to all his questions. In fact Inspector Ten said the accused could speak

e Cantonese well. After he had recorded the statement from the accused he read it back to him in Cantonese and gave him an opportunity to make corrections or alterations to the statement. The accused did not make any alterations and he then signed the statement.

Inspector Ten denied that the accused asked for a glass of water which he refused to give to him until after the cautioned statement had been recorded. As was stated earlier the

f accused did not pursue with this allegation when he gave his evidence.

EW2, Inspector Jalaluddin, the investigating officer of the case, confirmed that the accused and Wong Mei Lin were handed over to him by Inspector Ahmad Nordin (EW3) and that he instructed that the accused be brought to Inspector Ten for the purpose of a cautioned statement to be recorded from the accused. He said that he did not know that prior to the recording of the statement by the accused if a member of the arresting team had put the accused and the woman (Wong Mei Lin, who was arrested with the accused) together. He said suspects are provided with lunch when held over lunch although he did not personally see that the accused was given lunch or drink.

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Inspector Ahmad Nordin, EW3, confirmed that he handed over the accused and Wong Mei Lin to Inspector Jalaluddin, the investigating officer of the case. He said he had on 3 January 1984 brought the two to Selayang and Kepong together with the arresting team to search two houses and that before he left for the search he personally instructed that food be given to the accused and the woman. He said he and the rest returned to Jalan Bandar Police Station after 3 p.m. and he placed the two at the enquiry office and he handed over the accused and the woman to Inspector Jalaluddin at about 4.45 p.m. that day.

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As for the first allegation by the accused that he had been interrogated by 2 members of the arresting team and that he was assaulted, though Inspector Ten was not specifically asked about the assault, in reply to a general question he said that as far as he could see, the accused's physical condition was normal although he did not make a physical inspection of the accused's person. Inspector Ahmad said he did not know if members of the team took the suspects separately for interrogation. Inspector Jalaluddin, EW2 said that when he received the accused and his woman companion at 4.45 p.m. that day from Inspector Ahmad, the accused was in a "good condition" and he said by that he meant there were no injuries on his person. He agreed with defence Counsel however that he did not take out the shirt of the accused to examine him. As regards the first and second allegations that the accused and the woman companion of the accused had been interrogated separately by members of the arresting team he said he did not know because as soon as he had placed the two in the enquiry office he had gone back to his office. And he also said he did not know whether an interrogation team persuaded the woman to persuade the accused to give a statement. He said the suspects were surrendered to him at 4.45 p.m. and he did not know where they were before that.

I now come to the evidence of the accused DEW1 in the *voir dire*.

He said that after he and his woman companion had been arrested he went together with the police to search two of his houses and that they returned to Jalan Bandar Police Station about 3.30 p.m. He and the woman were placed in the enquiry room.

He said that then one member of the arrest team took the woman to a room. He said two of them (he identified them as Johari Chin (PW1) and Mohd. Noor (PW2) took him to another room. He said, "They took me to the room and assaulted me." He said PW2 assaulted him. He said he (PW2) talked to him first and punched him in his stomach three times. His hands were handcuffed to the back. He also said that when PW2 punched him, PW1 told him that when the time come he would have to give the statement or "they would give me more." He said that PW2 told him that in Malay, "Nanti keluar sana angkat statemen, lu ta' kasi lu kau kau." He said "kau kau" in Hokkien means "give you a several one - a hit or assault." He was asked if they talked to him "anything else" and he said, "No."

After that they took him out of the room to the enquiry office. His woman companion was there though no member of the arresting team was there. The woman was crying and when he asked her why she was crying she replied that the police told her to "tell me to admit" and that if he were to admit they would release her. He asked her "whether the thing is illegal" and she said "Yes" and she told him to admit as at the most he would be in prison for a few months and that if he did not admit she would not be released. According to him she also said that if she was not released then her mother would suffer as she was supporting her mother.

Although earlier he had said no member of the arresting team was there in the enquiry office where the girl was, he changed his mind when he was asked by his Counsel whether when she was talking to him there was any member of the arresting team around. He replied, "Two of them were there when she was talking to me."

He said subsequently another man came and took him to another room where Inspector Ten was. Inspector Ten asked him if he was going to give a statement or not and he (Inspector Ten) spoke to him in Hokkien and took down his particulars.

- a** He denied that Inspector Ten, before he administered the caution to him, had asked him the dialect he wished to speak in and that he elected to speak in Cantonese. When asked what he told Inspector Ten he said he wanted to speak in Hokkien. He admitted however he spoke in Cantonese though his Cantonese was “not that good.”
- b** He said he was a Hokkien and he normally spoke in Hokkien but Inspector Ten administered the caution in Cantonese. He when asked, “And he (Inspector Ten) said he tried to explain (the caution) to you in Cantonese,” replied, “But I didn’t understand and I told him that!” The accused said he asked Inspector Ten to explain twice.
- He admitted that Inspector Ten told him to read the caution in the written text but he said was not asked if he could read or not. When asked by his Counsel if he understood the Chinese text he replied, “Not much, no.” He said he did not complete Standard 2.
- c** He was asked by his Counsel whether he gave the statement voluntarily and he replied, “No” and when asked why, his answer, it was noted, was.
- Because at that time my mind was not steady and the girl kept pestering me.
- I shall deal with his answers he gave under cross-examination later.
- d** In rebuttal of his evidence of his being brought to a room and assaulted the prosecution called Johari (REW1) and Mohd. Noor (REW2). Both denied they had interrogated the accused. REW1 denied that he threatened the accused to give a statement and REW2 denied he assaulted the accused as alleged.
- REW1 said he accompanied Inspector Nordin for a search at Kajang and Selayang and on his return he together with his party we instructed to bring the accused and the woman to the enquiry office. After bringing them there he left for home. REW2 gave similar evidence.
- e** There were 5 persons who ambushed the accused and the woman. Johari chin and Mohd. Noor were in that team. It was the accused’s allegation that Johari and Mohd. Noor brought him to a room and one of the arresting team brought the girl to the room to persuade her to persuade him to make the cautioned statement. The prosecution called the other 3 remaining members of the arresting team, DPC Mohamed (REW5) and Mohd. Asri (REW4) and Disi (REW6); they all denied taking the woman into a room or persuading the woman to persuade
- f** the accused to give a statement.
- All these rebuttal witness were cross-examined as to what they did after they came back to the enquiry office. While they were not certain about the details as to their movements thereafter, they were firm they did not persuade her to persuade the accused to make a statement. In fact one of them, REW4, said that he thought she was not interrogated because she could not speak Malay. He said she could not understand well.
- g** Evidence was given that this woman had been released by the police and attempts to trace her were fruitless. This was the evidence of EW1 who had been recalled. She had given her telephone number and address to him and he could not trace her nevertheless. He also said that before she was released by the police he made her sign a bond to give evidence in Court.
- h** I now come to the rebuttal evidence to show that the accused could not understand Cantonese. The accused’s evidence was that he could not understand Cantonese. He also said the girl spoke to her in Hokkien. REW5, Woman Inspector Choo Lily, who recorded a cautioned statement from the woman said the woman spoke to her in Cantonese but she did
- i** not know if the woman could speak two dialects.

In viewing the totality of the evidence adduced at the *voir dire* I found that his 4 allegations which I have set out earlier were lies, invented to save his skin.

The two members of the raiding team who he pinpointed out as having brought him to a room, one of whom he alleged assaulted him, denied his allegations. It will be remembered that at first and then punched him 3 times in the stomach and that PW1 (REW1) told him that when the time came he would give the statement or "they would give me more." Under cross-examination he was asked how many times he was punched. Forgetting what he had said earlier in examination-in-chief he said, "I can't count how many times." "For how long was the punching?" he was asked. He replied, "For 10 minutes." If the punching had gone on for 10 minutes he would have been in a serious condition and that would have been noticeable - he would have been in pain and it would certainly have been noticeable that he was suffering from pain. But Inspector Ten, although he did not examine him physically, said he appeared to be normal. I find it strange that an allegation of assault was not brought up at the earliest time when Inspector Ten (EW1) and arresting officer (EW2) and the officer (EW3) who handed the accused to EW2 gave their evidence. Having also considered the evidence in rebuttal of the two officers REW1 (PW1) and REW2 (PW2) who denied taking the accused to the room and the that the accused was assaulted and of the evidence of Inspector Nordin that if there had been an interrogation he would have been usually informed and that in practice his men would not interrogate suspects without informing him and that they would not do anything behind his back, no reasonable doubt has been created in my mind that REW1 and REW2 did not bring him to a room, that REW2 did not assault him, that they did not persuade him to make a statement.

As regards the allegation that his woman companion was taken to a room by another member of the arresting team and persuaded her to persuade him to make a statement he could not pinpoint who amount the raiding officers was the one. All the officers concerned gave evidence and each denied the allegation. In fact one of them, REW4, said she could not speak or understand Malay well. These witness were cross-examined on a host of details relating to their movements after their arrival in the afternoon from the search of the two houses of the accused. There were lapses of memory, there were discrepancies as to what they did but I found all these, in the contest of a 4 year lapse from date of arrest to the date of trial, to be inconsequential matters which are apt to be forgotten given the volume of cases these witnesses would have done over the last 4 years. Again I have to bear in mind what was stated by Inspector Nordin that if an interrogation had taken place he would have been usually informed and that in practice his men would not interrogate suspects without informing him and that they would have been done anything behind his back. My view is that there is no reasonable doubt cast on their straightforward denial that they took the woman to a room to persuade her to persuade the accused to make a statement.

The woman was not called as a witness. I am however satisfied that the IO made every effort to trace her to no avail and I could not see any oblique motive on the part of the prosecution in her absence in Court.

With regard to the fourth allegation that the accused had asked Inspector Ten for a drink and that Inspector Ten refused this was not pursued by the accused when he gave his evidence. Inspector Ten had earlier denied the allegation and in any event evidence was adduced to show that Inspector Ahmad Nordin EW1 had personally instructed food be given to the accused and his companion. In the circumstances I hold that the allegation put to Inspector Ten is not true.

- a** As regards the third allegation, I hold that he understood the cautioned administered to him in Cantonese although he was Hokkien. Inspector Ten (EW1's) evidence was clear and straightforward. I cannot understand why he should have taken the particulars of the accused down in Hokkien and his statement in Cantonese unless the accused himself opted to speak in Cantonese after his particulars had been given in Hokkien. The accused's claim that he did not understand Cantonese went to ridiculous ends - he was a bus conductor and he
- b** spoke only in Hokkien and Malay and did not speak Cantonese! It is common knowledge that the common Chinese dialect spoken in Kuala Lumpur is Cantonese. Yet under cross-examination when asked, "Are you sure you spoke Hokkien to passengers?", he gave an incredible reply, "If he cannot speak, I'll ask him to look at the ticket as to the value of the ticket."
- c** The accused said he could not understand Chinese characters because he had not complete Standard 2 of his education. But when asked if he understood the Chinese text of the caution his answer was not that he could not understand the Chinese characters but, "Not much, no." But Inspector Ten was clear in his evidence that he administered and explained the caution to the accused in Cantonese and he asked the accused to read the Chinese text and he was asked whether he understood the caution and he replied,
- d** Yes I fully understand the above after I had been explained and after I had read in Chinese.
- This was reduced in writing and the accused appended his signature after it. Why should Inspector Ten have lied? Inspector Ten's evidence was clear and unambiguous. He candidly said that he did not test if the accused was proficient in Cantonese and Inspector Ten in recording the statement from him did not have difficulty in understanding him and he believed the accused understood him as the accused could reply to all his questions. And he added
- e** that accused could speak Cantonese well.
- The evidence of Woman Inspector Choo Lily who recorded a cautioned statement from the woman companion of the accused said she spoke in Cantonese. I am not prepared to read into that therefore the woman companion could not speak Hokkien or that she did not speak to the accused in Hokkien. However even after ignoring the evidence of woman Inspector
- f** Choo Lily on this matter I was satisfied beyond a reasonable doubt that in the totality of the evidence adduced in the *voir dire* Inspector Teh did explain the caution in the language which the accused elected to speak in and that the accused did read the Chinese text of the caution and that the accused understood the caution that was administered to him and that he also gave his statement voluntarily after the caution was administered to him; that the statement had not been obtained from him by fear or prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.
- g** In the circumstances I held that the cautioned statement by the accused to be admissible in evidence.

Also found at [1988] 2 CLJ 836

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